IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2856 OF 2004

IN

FIRST APPEAL NO. 176 OF 2001

WITH

CIVIL APPLICATION NO. 2855 OF 2004

IN

FIRST APPEAL NO. 177 OF 2001

Shri Babu Daji Kadam ..Applicant

versus

The Oriental Insurance Co.
Ltd. & Ors. ..Respondents

Mr. S. D. Dharmadhikari for the Applicant.

Mrs. P. Patil for the Respondents No.2 and 3.

CORAM : D. G. DESHPANDE,J.

DATE : 12TH JANUARY,2005

P.C. (IN CHAMBER) :

1. Heard learned counsel for the Applicant and Respondents No.2 and 3.

2. When the matter was on board earlier, after hearing the advocate for the appellant, an order was passed by me on 12.3.2001 as under:

> "Heard the Advocate for the Appellant. He has come to this Court against the order dated 9.10.2000 because according to him 2nd para (on page 22) of this Appeal papers (page 16 of the impugned orders) and 4th para are contradictory. If this is so, Appellant is at liberty to approach the Joint District Judge and Member, M.A.C.T. Sangli for clarification and correction. Appellant is permitted to withdraw this Appeal along with Civil Application."

3. Counsel for the applicant states that thereafter he approached MACT, Sangli, for clarification and correct. But in the meantime a Member of the MACT who had passed the impugned order dated 9.10.2000 was transferred or changed and the incumbent refused to give any clarification and correction.

4. Now the counsel for the applicant has taken out both these applications. According to him if the correction and clarification has not been done by the Member, MACT, Sangli, and if that was the

reason for which he was permitted to withdraw the Appeals along with the civil application, then he prays that now appeals and civil applications should be restored to file and the same issue about contradiction or conflict should be decided by this court.

5. The conflict or the contradiction is that at one place MACT Sangli in the impugned order has held that the appellant and the insurance company can jointly and severally liable and at other place MACT has held that if the insurance company is required to pay, they will be entitled to recover the amount from the appellant. This is admittedly a contradiction, and since the efforts and attempt of the applicant to seek clarification and correction from the MACT, Sangli, have not been successful, for the reasons stated above, these applications are required to be allowed.

6. Counsel for the claimants stated that whatever amount has been deposited before the MACT, should be permitted to be withdrawn by the claimants. Counsel for the applicant has no objection in that regard. Therefore, in view of these circumstances order permitting the appellant to withdraw his appeals No. 176 and 177 of 2001 along with respective civil applications, is

recalled. Both the appeals and the respective civil applications are restored to file. The matter may be placed before the appropriate court for admission. Till the appeals are admitted there will be stay to the rights given to the Insurance Company to get reimbursement from the applicant. Both the civil applications are disposed of accordingly. Certified copy expedited.

12.1.2005 (D. G. DESHPANDE,J.)